



Fair Political Practices Commission

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NEWS ADVISORY

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FPPC considers proposal for increased jurisdiction over conflicts

Legislation required for authority to interpret Government Code Section 1090

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A proposal to study giving the Fair Political Practices Commission authority to administer a key conflict-of-interest statute – Government Code Section 1090, which includes criminal penalties and is enforced by local prosecutors and the Attorney General's office – will be discussed by the commission at its monthly meeting on Thursday, July 10.

Thursday's meeting begins at 9:30 a.m. in the FPPC's eighth-floor hearing room at 428 J St. (Fifth and J Streets) in Sacramento. The agenda is attached or available on the agency Web site at www.fppc.ca.gov.

Government Code Section 1090 prohibits public officials from having a financial interest in any contract made by them in an official capacity. Violations of 1090 are currently prosecuted by local District Attorneys as well as the state Attorney General's office. It has been proposed that by moving the 1090 provisions into the Political Reform Act, the commission could further clarify and implement the law as well as provide advice to officials attempting to comply. Any proposed modification would require legislative action.

A lengthy staff memorandum outlining the various aspects – and options – in the proposal will be discussed as **agenda item #17**. Prepared by Assistant General Counsel John Wallace and General Counsel Luisa Menchaca, the memorandum can be obtained from the Web site by clicking on the link in that agenda item.

Section 1090 predates the Political Reform Act of 1974, which established the FPPC, and numerous recommendations have been made over the years to merge section 1090 with the conflict provisions in the Political Reform Act. The FPPC enforces numerous conflict-of-interest provisions, and provides advice to public officials attempting to comply with those rules. The overlapping jurisdiction is a source of confusion to public officials who must comply with state law – as well as follow many local requirements.

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“Similar to the [Political Reform] Act, section 1090 requires disqualification in some circumstances where a conflict of interest exists, and even provides more severe consequences than the Act in other circumstances,” according to the FPPC staff memorandum. “Section 1090 generally prohibits agencies from contracting in cases where a member of the governing body may have a financial interest in the contract. In addition to voiding a contract made in violation of its prohibition, section 1090 also provides for felony penalties.”

In 1999, the Bipartisan Commission on the Political Reform Act – more commonly known as the McPherson Commission after the author of the legislation creating it, Sen. Bruce McPherson (R-Santa Cruz) – recommended that all state conflict-of-interest statutes be consolidated “into a single code or body of law to be interpreted and enforced consistently by a single state agency.” The McPherson Commission further recommended that all conflict statutes “presumably” should be consolidated into the Political Reform Act, which is administered by the FPPC.

The FPPC has only civil, not criminal, authority. Any possible criminal violations are referred to local District Attorneys or to the Attorney General’s office.

In other business at the July 10 meeting, the FPPC will be asked to consider adoption of a regulation which clarifies how the contribution and expenditure limits of Proposition 34 apply to state candidates and campaign committees in a recall election. The regulation also provides guidance about the reporting requirements for candidates and committees involved in recalls at the state and local level. The matter will be considered as **agenda item #16**.

You can obtain memoranda related to specific agenda items -- including proposed stipulations in enforcement matters -- by clicking on that agenda item. Written comments received after the agenda was mailed and posted on the Web site are noted at the top of the agenda.

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